# IN THE HIGH COURT OF BOMBAY AT GOA

## WRIT PETITION NO.150 OF 2006

Ana Praxedes da Piedade Pinto alias Anita Pinto, aged about 87 years, daughter of late Jose Antonio Luis Gonzaga Pinto, person of unsound mind, represented by Sr. Zeena Fernandes, In-charge of Old Age Home run by the Nuns of the Society of St. Joseph of Cluny, resident of Nagoa, Verna, Salcete, Goa. ... Petitioner

Versus

1. Shri Joaquim Filipe Afonso alias Felix Afonso, major in age, son of Leao Afons, married and his wife
2. Ms. Maria Lourenciana Juliana Crasto e Afonso, housewife, major in age;

both residents of House No.223, Fatorda, Margoa, Goa. ... Respondents

Mr. A.F. Dinez for the petitioner.

Mr. Shiven Dessai for the respondents.

**CORAM : SMT. RANJANA DESAI, J.**

**DATED : 23RD JUNE, 2006.**

**ORAL JUDGMENT :**

Rule. By consent of the parties taken up for hearing forthwith.

1. The petitioner is a person of unsound mind. She is aged about 87 years. She has filed this petition through Sr. Zeena Fernandes, In-charge of Old Age Home run by the Nuns of the Society of St. Joseph of Cluny. In this petition, the order dated 7/3/2006 passed by the IInd Additional Civil Judge, Senior Division at Margao in Special Civil Suit No.94/2004/II is under challenge.

2. The facts which give rise to the petition may be shortly stated :

By an order dated 14/11/1969, the District and Sessions Court of Goa, Daman and Diu at Panaji, had ordered that an inquiry be held as to whether the petitioner is of unsound mind and is incapable of managing her affairs. Accordingly, an inquiry was held and witnesses were examined. Dr. Adelia Costa, a specialist in mental deceases, was also examined. After the conclusion of the inquiry, the petitioner was held to be a person of

unsound mind. Thereafter, by order dated 30/4/1970, one Louis Gonzaga Antonio D'Sao B. Pinto (for convenience, “the said Louis”) was appointed to be the manager of the properties of the petitioner.

3. The petitioner filed Special Civil Suit No.94/2004/II. In the suit, the case of the petitioner was that she is the owner of the properties described in paragraph 1 of the plaint; that the said Louis was appointed as her guardian to manage and administer her properties; that the petitioner was admitted in an old age home at Salcete and that taking advantage of the situation, the said Louis executed a sale deed in respect of the suit property in favour of respondents 1 and 2/defendants 1 and 2 respectively. The said sale deed is dated 9/6/2000 and is registered in the Office of the Sub-Registrar of Salcete at Margao. The said Louis died on or about 6/5/2003. According to the petitioner, she was not aware of the said sale deed. She came to know about it only in the month of July, 2004. It is her case that the said Louis had no right to the suit property and that the said sale deed is illegal, null and void and without any legal effect. In the suit, the petitioner prayed for a declaration that the sale deed dated 9/6/2000 is illegal, null and

void and for other consequential reliefs.

4. A written statement came to be filed by defendants 1 and 2. In the written statement, defendants 1 and 2 contended that they are the agricultural tenants of the suit property and, therefore, are the deemed purchasers. In view of the said averments, the trial court framed an issue regarding tenancy of defendants 1 and 2. It reads thus :

> "Whether defendants 1 and 2 prove that they are agricultural tenant and thus deemed purchasers of the suit property ?"

5. The plaintiff moved an application praying that this issue be deleted. By the impugned order, the learned trial judge rejected the prayer and, hence, this writ petition.

6. I have heard, at considerable length, the learned counsel appearing for the petitioner. The learned counsel contended that the plea of tenancy is

taken by the defendants just to delay the proceedings. He submitted that the plea is vague, frivolous and vexatious. According to the learned counsel, the said plea is not borne out by the averments made in the written statement and, hence, the learned judge ought to have deleted the issue. In support of his submissions, the learned counsel relied on the judgment of the Supreme Court in ***Thomas Antony v. Varkey Varkey, (2000) 1 SCC 35***; the judgments of this court in ***Pandu Dhondi Yerudkar and another v. Ananda Krishna Patil, AIR 1975 Bom. 52; Uttam Sambha Deshmukh and others v. Yamunabai w/o. Chandrabhan Bhoyar and others, 1998(4) Bom.C.R. 441 (Nagpur Bench) and Ramu Shivappa Agalgave and others v. Imam Kashim Pathan and others, 1992(3) Bom.C.R. 560***.

7. The learned counsel contended that the intention of the defendants is to delay the suit because once tenancy issue is framed it will have to be referred to the tenancy court. The learned counsel submitted that in ***Thomas Antony's case (supra)***, the Supreme Court has categorically stated that it is only in cases where the bona fide and legally sustainable plea of tenancy is taken by the party that the question can be referred to the

Tribunal and that while making a reference to the Tribunal mandatory, the legislature cannot be said to have intended that even a patently frivolous, mala fide and illegal plea of tenancy taken by a party merely to delay the proceeding and to remain in possession of the property is also to be referred to the Tribunal. The learned counsel further pointed out that in this judgment, it is observed by the Supreme Court that if there is not even a remote possibility of the said plea being upheld by the Land Tribunal the civil court can conclude that the question does not reasonably arise in the case. The learned counsel submitted that in this case, it is evident that the plea is frivolous, mala fide and illegal and there is not even a remote possibility of the defendants succeeding in proving that they are tenants. The petitioner is admittedly a person of unsound mind. By procrastinating the litigation, the defendants want to ensure that the petitioner, who has already been defrauded, does not get any relief at all. The learned counsel pointed out that in the written statement, no particulars have been given as to when the tenancy was created, the person by whom it was created and the terms on which it was created. The written statement is absolutely vague. In such a case, the judgment of the Supreme Court in ***Thomas***

***Antony's case (supra)*** is clearly attracted.

8. He then referred to ***Pandu Dhondi's case (supra)***, where this court has observed that when a vague plea is made by the defendant, contending that he is a tenant of the land, the court should hesitate to frame such an issue on such a vague plea unless the defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. The learned counsel then relied on ***Uttam S. Deshmukh's case (supra)*** where this court has again reiterated the same principles. He submitted that even in ***Ramu Shivappa Agalgave's case (supra)***, this court has observed that it is the duty of the court to examine the substance and refuse to frame and remit any such issue if the same appears to be demonstrably frivolous and mala fide. The learned counsel urged that in the facts of this case, this court will have to conclude that the plea of tenancy is frivolous and mala fide.

9. The learned counsel then relied on ***Ramesh Kumar's case (supra)*** where this court was dealing with section 55 of the Presidency Towns

Insolvency Act and section 111(d) of the Transfer of Property Act. This court observed that if the lessee purchases the lessor's interest, the lease is extinguished as the same person cannot at the same time be both landlord and tenant. This court took the view that in view of the doctrine of merger, the lease-hold rights in favour of the appellants therein in respect of the flat stood extinguished by operation of law as well as by act of parties on the insolvent therein transferring the title to the flat in favour of the appellants therein. The learned counsel contended that in the written statement, the defendants have accepted the sale deed. The defendants are purchasers of the property. Therefore, in the light of the judgment in ***Ramesh Kumar's case (supra)***, it must be said that by virtue of section 111(d) of the Transfer of Property Act, the lease-hold rights have merged with the sale deed and, therefore, it was not possible for the defendants now to put up the claim of tenancy. Besides the said Louis was appointed as Administrator/Manager of the property of the petitioner and, hence, he could not have transferred the property by way of lease. The defendants, therefore, have not even a remotest chance of succeeding in the case and, therefore, the learned judge ought to have deleted the plea of tenancy.

10. On the other hand, the learned counsel for the respondents contended that no interference is necessary with the impugned order. He submitted that the written statement does contain averments regarding the plea of tenancy of the defendants. This is certainly not one of those cases where the averments are totally vague or could be described as frivolous and vexatious and, therefore, the judgments cited by the petitioner are not applicable to the instant case at all. He submitted that whether there is a merger or not is a question which could be ultimately decided at the trial of the suit and at this stage this court should not prejudge the issue.

11. It is true that a court should not allow an issue of tenancy to be framed when the plea taken by the defendants is vague, vexatious or mala fide. The person, who claims to be a tenant must necessarily give particulars as to who created the tenancy, the terms of the tenancy and when the tenancy was created. It is also true that the court will consider whether the plea is mala fide and is taken up just to procrastinate the litigation. The court will also have to take into account the possibility of

the defendant succeeding in proving his plea. If it is found that there is absolutely no chance or a remote possibility of the defendant succeeding in establishing his claim, in a given case, in the light of the judgment of the Supreme Court in ***Thomas Antony's case (supra)***, the court can disallow the application for framing such an issue. It is necessary to see whether in this case, the plea is vague, frivolous or vexatious.

12. Paragraph 3 of the written statement reads as under :

> "3. With reference to the contents of para 5 it is admitted that Luis Gonzaga Antonio de Sao Bernardo Pinto was administrating the suit property however, he had submitted that it was an ancestral property which devolves to him. The property is an agricultural property comprising of coconut trees. The coconut trees in the said property which are existing today are mostly planted by the defendant who was

maintaining looking after and doing all the agricultural operation in the said property since about 1969 or so. Said Luis Gonzaga Antonio de Sao Bernardo Pinto had come down to Goa from Portugal and had met the defendant at that time. It is submitted that said Luis Gonzaga Antonio de Sao Bernardo Pinto had no knowledge of agricultural operation and therefore had entrusted the defendant with the agricultural operation in the said property. The defendant used to do the plucking and the part of the produce that was sold is to be shared with said Luis Gonzaga Antonio de Sao Bernardo Pinto as consideration for allowing the defendants to cultivate the said land by coconut plantation. The defendant therefore submits that he is an agricultural tenant of the said property and a deemed purchaser."

13. It is clear from this paragraph that it is the case of the defendant that on the land in question, he was doing agricultural operations since 1969. The said Louis had entrusted the said work to him. A part of the produce was to be shared with the said Louis as consideration for allowing the defendant to cultivate the said land. As per the Goa Tenancy Act and Rules, the rent means any consideration in money or kind or both, paid or payable by a tenant on account of the use or occupation of the land held by him but shall not include the rendering of any personal service or labour. Therefore, as the written statement stands today, it cannot be said that the defendant has not given any particulars of his claim of tenancy at all. According to the defendant, it is the said Louis, who created the tenancy. The name of the said Louis appears in the revenue record as owner of the property. The defendant was, at the instance of said Louis, doing the agricultural operation and the share of profit obviously is the rent to be paid to the said Louis. Such pleadings by no stretch of imagination can be said to be vague. At this stage, the fact that in the revenue record, the name of said Louis is shown as owner of the suit land also assumes importance.

14. In paragraph 4 of the written statement, it is stated that out of concern for the good relationship, the defendant did not press for the deemed purchaser benefit under the Agricultural Tenancy Act but went in for a sale deed so that his landlord would receive just compensation for the land. It is further stated that this sale deed was executed by the defendant so that the landlord would be able to meet his financial requirements and this was done taking into account the fact that the defendant had benefited from the goodness of said Louis. It is further stated that the defendants never desired to cheat the said Louis by taking undue advantage of the deemed purchaser concept whereby the landlord would receive only a paltry compensation under the Agricultural Tenancy Act. The learned counsel for the petitioner led stress on this paragraph and contended that it is a totally fraudulent stand. It is illegal and untenable. As to whether it is illegal or untenable will be decided by the trial court when the evidence is led by the parties before it. In my opinion, it is not appropriate, in the facts of this case, to opine, at this stage, that this plea is untenable. The judgment of this court in ***Ramesh Kumar's case (supra)*** pertains to an appeal. At

this stage, it would not be appropriate to apply it to the facts of this case.

15. The fact remains that according to the defendants, since about 1969, they are cultivating the land at the instance of said Louis and are carrying out the agricultural operation and giving a share of profit to said Louis. Therefore, there is an indication in the written statement as to who created the tenancy; what were the terms of the tenancy and what was the rent being paid to the owner. This is not one of those cases which were before the Supreme Court and this court which are cited by the learned counsel for the petitioner. It is true that the petitioner is an insane person. It is quite possible that she has been defrauded. If that is so, undoubtedly, the trial court will take care of the fraud which is played on the petitioner when the evidence is led and the trial court has to deal with it. But on this ground, framing of an issue cannot be disallowed if it is borne out by the pleadings. While rejecting the petition, all that I can express is that looking to the fact that the petitioner is an insane person and the possibility that she has been cheated and she is a person of 87 years of age, the trial court should ensure that the suit is decided at the earliest. If a reference is made to the tenancy

court in the facts of this case, the tenancy court is under an obligation to decide the issue of tenancy at the earliest. In my opinion, the entire exercise should be completed as far as possible within a period of eight months from today since the court is dealing with a case of senior citizen, who is insane and 87 years of age. With these observations, the petition is dismissed.

(SMT. RANJANA DESAI, J.)